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4	4	
15	UNITED STATES DIS	STRICT COURT
16	NORTHERN DISTRICT	OF CALIFORNIA
17	SAN FRANCISCO	O DIVISION
18		ASE NO. 3:23-cv-02880-JSC
9	Disinsiff	
20		EFENDANT ACTIVISION BLIZZARD, C.'S STATEMENT IN RESPONSE TO
21	$_{1\parallel}$ PI	AINTIFF FEDERAL TRADE OMMISSION'S ADMINISTRATIVE
22	2 and Me	OTION TO CONSIDER WHETHER NOTHER PARTY'S MATERIAL
23	SE SE	OULD BE SEALED (Civil L.R. 79-5(f))
24	4	CF NO. 226]
25	Judg	ge: Honorable Jacqueline S. Corley
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I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5(f)(3), Activision Blizzard, Inc. ("Activision") respectfully requests that the Court maintain under seal its confidential information identified below, which was provisionally filed under seal pursuant to Plaintiff Federal Trade Commission's (hereinafter "FTC" or "Plaintiff") Administrative Motion to Consider Whether Another Party's Materials Should Be Sealed (the "Administrative Motion") (ECF No. 226). For the reasons described below and in the Declaration of Page Robinson (the "Robinson Decl.") attached hereto, Activision respectfully requests that the Court consider this submission, which narrows the information that would be maintained under seal within the Direct Testimony of Robin S. Lee by the FTC (ECF No. 224) ("Lee Direct").

The proposed sealing in the chart below reflects Activision's good-faith efforts to narrowly seek sealing of only that information which is competitively sensitive and contained in internal documents, the public disclosure of which would cause injury to Activision that cannot be avoided through any less restrictive alternative means.

Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
Direct Testimony of Robin S. Lee by the FTC	Page 6, fn. 3, footnote lines 1-3 ¹	Activision	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and business partnerships, which could be used to injure Activision if made publicly available.

¹ Activision can identify the specific portions referenced in this chart in a highlighted copy of the Lee Direct if the Court finds it helpful to issue its sealing order.

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2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3	Direct Testimony of Robin S. Lee by the FTC	Page 7, ¶ 20, paragraph line 4 and line 5	Activision	This portion contains non-public and highly sensitive information
5 6				including, but not limited to, revenue figures and projections,
7 8				which could be used to injure Activision if made publicly available.
9 10	Direct Testimony of Robin S. Lee	Page 7, ¶ 21, paragraph line 4 and line 5	Activision	This portion contains non-public and highly
11	by the FTC			sensitive information including, but not
12 13				limited to, revenue figures and projections,
14				and internal user metrics, which could be used to injure Activision if made
15 16	Direct	Dage 10 # 29 accord		publicly available.
17 18	Direct Testimony of Robin S. Lee by the FTC	Page 10, ¶ 28, second bullet, portions of lines 1-3	Activision	This portion contains non-public and highly sensitive information
19	by the FTC			including, but not limited to, strategic
20 21				evaluation of forward-looking opportunities,
22				assessment of the competitive landscape, and business
23 24				partnerships, which could be used to injure
25				Activision if made publicly available.
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2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3	Direct Testimony of Robin S. Lee	Page 10, ¶ 28, third bullet, portions of paragraph lines 2-4	Activision	This portion contains non-public and highly
5	by the FTC	paragraph mes 2		sensitive information including, but not
6				limited to, strategic
7				looking opportunities,
8				assessment of the competitive landscape,
9				and business partnerships, which
10				could be used to injure
11				Activision if made publicly available.
12	Direct	Page 11, ¶ 28, fourth	Activision	This portion contains
13 14	Testimony of Robin S. Lee	bullet, portions of lines 2-4		non-public and highly sensitive information
15	by the FTC			including, but not
16				limited to, strategic evaluation of forward-
17				looking opportunities, assessment of the
18				competitive landscape,
19				and business partnerships, which
20				could be used to injure Activision if made
21				publicly available.
22	Direct Testimony of	Page 11, ¶ 29, portions of lines 1-4	Activision	This portion contains
23 24	Robin S. Lee by the FTC	or mico I		non-public and highly sensitive information
25				including, but not limited to, strategic
26				evaluation of forward-
27				looking opportunities, assessment of the
28				competitive landscape, business partnerships,

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2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3				and terms of existing
4				confidential agreements, which could be used to
5				injure Activision if made publicly available.
6				
7				
8	Direct Testimony of	Page 11, ¶ 29, portions of lines 5-10	Activision	This portion contains non-public and highly
9	Robin S. Lee by the FTC			sensitive information
10				including, but not
11				limited to, strategic evaluation of forward-
12				looking opportunities,
13				assessment of the competitive landscape,
14				business partnerships,
15				and terms of existing confidential agreements,
16				which could be used to
17				injure Activision if made publicly available.
18	Direct	Page 11, fn. 21, portions	Activision	
19	Testimony of Robin S. Lee	of lines 5-6	Activision	This portion contains non-public and highly
20	by the FTC			sensitive information
21				including, but not limited to, terms of
22				existing confidential
23				agreements, which could be used to injure
24				Activision if made
				publicly available.
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2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3	Direct Testimony of	Page 11, fn. 23, portions of lines 2-4	Activision	This portion contains
4	Robin S. Lee by the FTC			non-public and highly sensitive information
5				including, but not
6				limited to, strategic evaluation of forward-
7				looking opportunities,
8				assessment of the competitive landscape,
9				business partnerships,
10				and terms of existing confidential agreements,
11				which could be used to
12				injure Activision if made publicly available.
13	Direct	Page 12, ¶ 30, lines 4-5	Activision	This portion contains
14	Testimony of Robin S. Lee	3 / 11	11011 (181011	non-public and highly
15	by the FTC			sensitive information including, but not
16				limited to, strategic
17				evaluation of forward- looking opportunities,
18				assessment of the
19				competitive landscape, business partnerships,
20				and terms of existing
21				confidential agreements, which could be used to
22				injure Activision if made
23				publicly available.
24	Direct Testimony of	Page 12, ¶ 31, portions of lines 7-8	Activision	This portion contains non-public and highly
25	Robin S. Lee by the FTC			sensitive information
26				including, but not limited to, market share
27				analyses, assessment of
28				the competitive landscape, and business
		<u> </u>		initiating, and outsiness

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1	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
2		Olider Seal		partnerships, which
3				could be used to injure
4				Activision if made publicly available.
5				r we coosy to constitute of
6				
7	Dim et	D 12 # 21		
8	Direct Testimony of	Page 12, ¶ 31, portions of paragraph line 10	Activision	This portion contains non-public and highly
9	Robin S. Lee by the FTC			sensitive information
10				including, but not limited to, market share
11				analyses, assessment of
12				the competitive
13				landscape, and business partnerships, which
14				could be used to injure
15				Activision if made publicly available.
16	Direct	Page 13, Figure 1	Activision	This portion contains
17	Testimony of Robin S. Lee	1 486 10, 1 18410 1	7 Cu vision	non-public and highly
18	by the FTC			sensitive information including, but not
19				limited to, strategic
20				evaluation of forward-
21				looking opportunities, market share analyses,
22				assessment of the
23				competitive landscape, and business
				partnerships, which
24				could be used to injure Activision if made
25				publicly available.
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$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3	Direct Testimony of	Page 14, ¶ 34, portions of lines 2-5	Activision	This portion contains non-public and highly
4	Robin S. Lee by the FTC			sensitive information
5				including, but not limited to, internal
6				decision-making
7				processes, investment decisions, strategic
8				evaluation of forward-
9				looking opportunities, assessment of the
10				competitive landscape, and internal
11				presentations discussing
12				business strategy, which
13				could be used to injure Activision if made
14				publicly available.
15	Direct Testimony of	Page 14, fn. 25, portions of lines 3-4	Activision	This portion contains
16	Robin S. Lee by the FTC	of fines 5 +		non-public and highly sensitive information
17	by the FTC			including, but not
18				limited to, internal decision-making
19				processes, investment
20				decisions, strategic evaluation of forward-
21				looking opportunities,
22				and internal presentations discussing
23				business strategy, which
24				could be used to injure Activision if made
25				publicly available.
26		I		

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1				
2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3	Direct Testimony of	Page 17, Figure 2	Activision	This portion contains
4	Robin S. Lee by the FTC			non-public and highly sensitive information
5				including, but not
6				limited to, strategic evaluation of forward-
7				looking opportunities,
8				market share analyses,
9				assessment of the competitive landscape,
10				and business
11				partnerships, which could be used to injure
				Activision if made
12				publicly available.
13	Direct Testimony of	Page 17, ¶ 44, portion of paragraph line 1	Activision	This portion contains
14	Robin S. Lee by the FTC	purugrupu mie r		non-public and highly sensitive information
15	by the FTC			including, but not
16				limited to, assessment of the competitive
17				landscape, which could
18				be used to injure Activision if made
19				publicly available.
20	Direct	Page 31, fn. 73, portions	Activision	This portion contains
21	Testimony of Robin S. Lee	of lines 1-2	retivision	non-public and highly
22	by the FTC			sensitive information including, but not
23				limited to, assessment of
24				the competitive
25				landscape, business partnerships, and terms
26				of existing confidential
27				agreements, which could be used to injure
28				Activision if made
				publicly available.

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1 2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Direct Testimony of Robin S. Lee by the FTC	Page 32, fn. 74, portions of lines 1-6	Activision	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, and internal presentations discussing business strategy, which could be used to injure Activision if made
16 17 18 19 20 21 22 23 24 25	Direct Testimony of Robin S. Lee by the FTC	Page 34, fn. 77, portions of lines 1, 3	Activision	publicly available. This portion contains non-public and highly sensitive information including, but not limited to, market share analyses, assessment of the competitive landscape, and internal business metrics, which could be used to injure Activision if made publicly available.

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1	Document	Portions to Be Filed	Designating Party	Basis for Sealing
2		Under Seal		Request
3	Direct Testimony of	Page 38, ¶ 104, portions of lines 6, 8-9, 11, 14	Activision	This portion contains
4	Robin S. Lee by the FTC			non-public and highly sensitive information
5	by the Fre			including, but not
6				limited to, market share analyses, assessment of
7				the competitive
8				landscape, business
				partnerships, and revenue figures and
9				projections, which could
10				be used to injure Activision if made
11				publicly available.
12	Direct	Page 39, ¶ 106, portions	Activision	This portion contains
13	Testimony of Robin S. Lee	of lines 2-3, 6, 8, 10-11	Activision	non-public and highly
14	by the FTC			sensitive information
15				including, but not limited to, market share
16				analyses, assessment of
17				the competitive landscape, business
18				partnerships, and
19				revenue figures and
20				projections, which could be used to injure
21				Activision if made
22				publicly available.
23	Direct Testimony of	Page 40, ¶ 109, portions of lines 2-3, 5	Activision	This portion contains
	Robin S. Lee by the FTC	- , -		non-public and highly sensitive information
24				including, but not
25				limited to, assessment of the competitive
26				landscape, and revenue
27				figures and projections,
28				which could be used to

1 2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3				injure Activision if made publicly available.
4				publicly available.
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6				
7		7 10 7 110		
8	Direct Testimony of	Page 40 ¶ 110, portions of lines 6-7	Activision	This portion contains non-public and highly
9	Robin S. Lee by the FTC	Page 41, ¶ 110, portion of line 2		sensitive information
10		of fine 2		including, but not limited to, assessment of
11 12				the competitive landscape, and revenue
13				figures and projections,
14				which could be used to injure Activision if made
15				publicly available.
16	Direct Testimony of	Page 43, Figure 5	Activision	This portion contains non-public and highly
17	Robin S. Lee by the FTC			sensitive information
18				including, but not limited to, assessment of
19				the competitive landscape, and revenue
20				figures and projections,
21				which could be used to injure Activision if made
22				publicly available.
23 24	Direct Testimony of	Page 43, ¶ 117, portions of lines 4, 6-7	Activision	This portion contains
25	Robin S. Lee by the FTC	.,		non-public and highly sensitive information
26				including, but not limited to, assessment of
27				the competitive
28				landscape, and revenue figures and projections, which could be used to

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Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
			injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 44, fn. 87, second paragraph, portions of lines 2-3	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, and revenue figures and projections, which could be used to injure Activision if made publicly available.
Direct Testimony of Robin S. Lee by the FTC	Page 46, ¶ 126, portions of lines 8-9 Page 47, ¶ 126, portions of lines 1-2	Activision	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, business partnerships, and revenue figures and projections, which could be used to injure Activision if made publicly available.

1				
2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3	Direct Testimony of Robin S. Lee	Pages 46, fn. 93, portion of lines 9	Activision	This portion contains non-public and highly
5	by the FTC			sensitive information including, but not
6				limited to, assessment of the competitive
7				landscape, business
8				partnerships, and revenue figures and
9				projections, which could be used to injure
10				Activision if made
11				publicly available.
12	Direct Testimony of	Pages 47, ¶ 127, first bullet	Activision	This portion contains non-public and highly
13	Robin S. Lee by the FTC			sensitive information
14 15				including, but not limited to, assessment of
16				the competitive landscape, business
17				partnerships, revenue
18				figures and projections, and internal business
19				strategy, which could be used to injure Activision
20				if made publicly
21				available.
22	Direct Testimony of	Pages 47, ¶ 127, second bullet	Activision	This portion contains non-public and highly
23	Robin S. Lee by the FTC			sensitive information
24				including, but not limited to, assessment of
25				the competitive
26				landscape, business partnerships, revenue
27 28				figures and projections, and internal business
				strategy, which could be

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1 2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3				used to injure Activision if made publicly
4				available.
5				
6 7				
8	Direct Testimony of	Pages 47, ¶ 127, third bullet ²	Activision	This portion contains
9	Robin S. Lee by the FTC	bunct		non-public and highly sensitive information
10				including, but not limited to, assessment of
11				the competitive
12				landscape, business partnerships, revenue
13 14				figures and projections, and internal business
15				strategy, which could be
16				used to injure Activision if made publicly
17				available.
18	Direct Testimony of	Pages 47, fn. 96, portions of lines 1-2	Activision	This portion contains non-public and highly
19	Robin S. Lee by the FTC			sensitive information
20				including, but not limited to, assessment of
21				the competitive landscape, business
22				partnerships, revenue
23				figures and projections, and internal
24				presentations discussing business strategy which
25 26				could be used to injure

² Activision only seeks to seal the amounts listed in this portion of Lee's testimony, and not the full text as originally proposed.

1 2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3				Activision if made publicly available.
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8	Direct Testimony of Robin S. Lee	Page 49, ¶ 130, portions of lines 1-2, 4^3	Activision	This portion contains non-public and highly
9	by the FTC			sensitive information including, but not
10 11				limited to, business
12				partnerships, and terms of existing confidential
13				agreements, which could be used to injure
14				Activision if made publicly available.
15	Direct	Page 40 fn 104 portion	A	
16	Testimony of Robin S. Lee	Page 49, fn. 104, portion of fn. line 1	Activision	This portion contains non-public and highly
17	by the FTC			sensitive information including, but not
18				limited to, business
19				partnerships, and terms of existing confidential
20				agreements, which could
21				be used to injure Activision if made
22				publicly available.
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³ Activision only seeks to seal the time listed in this portion of Lee's testimony, and not the full text as originally proposed.

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2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3	Direct Testimony of Robin S. Lee by the FTC	Page 51, ¶ 140, portion of paragraph line 2	Activision	This portion contains non-public and highly sensitive information
5				including, but not limited to, internal
6				decision-making
7				processes, strategic evaluation of forward-
8				looking opportunities, and internal business
9				strategy, which could be
10				used to injure Activision if made publicly
11				available.
12 13	Direct	Page 51, fn. 110,	Activision	This portion contains
14	Testimony of Robin S. Lee	portions of lines 1-4		non-public and highly sensitive information including, but not
15	by the FTC			
16				limited to, internal decision-making
17				processes, strategic
18				evaluation of forward-looking opportunities,
19				and internal business
20				strategy, which could be used to injure Activision
21				if made publicly available.
22	Direct	Page 65, fn. 138,	Activision	
23	Testimony of Robin S. Lee	portions of lines 2-4	Activision	This portion contains non-public and highly
24	by the FTC			sensitive information including, but not
25				limited to, internal
26				decision-making processes, strategic
27				evaluation of forward-
28				looking opportunities, business partnerships,

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1	Document	Portions to Be Filed	Designating Party	Basis for Sealing
2	Document	Under Seal	Designating 1 arty	Request
3				and internal business
4				strategy, which could be used to injure Activision
5				if made publicly
6				available.
7				
8	Direct	Page 70, fn. 155, portion	Activision	This portion contains
9	Testimony of Robin S. Lee	of lines 1-9		non-public and highly
10	by the FTC			sensitive information including, but not
				limited to, internal
11				decision-making processes, strategic
12				evaluation of forward-
13				looking opportunities,
14				assessment of the competitive landscape,
15				business partnerships,
16				terms of existing confidential agreements,
17				and internal
18				presentations discussing
19				business strategy, which could be used to injure
20				Activision if made
21				publicly available.
22	Direct Testimony of	Pages 70, ¶ 198, first bullet, portions of lines	Activision	This portion contains
23	Robin S. Lee by the FTC	3-5		non-public and highly sensitive information
24				including, but not
25				limited to, internal decision-making
26				processes, strategic
27				evaluation of forward- looking opportunities,
				assessment of the
28				competitive landscape,

1	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing
2		Under Seal		Request
3				business partnerships, terms of existing
4				confidential agreements, and internal
5				presentations discussing
6				business strategy, which could be used to injure
7				Activision if made
8				publicly available.
9	Direct Testimony of	Pages 70, ¶ 198, second bullet, portion of line 2	Activision	This portion contains
10	Robin S. Lee by the FTC	Pages 71, ¶ 198, second		non-public and highly sensitive information
11		bullet, portion of line 1-		including, but not
12				limited to, internal decision-making
13				processes, strategic
14				evaluation of forward-
15				looking opportunities, assessment of the
16				competitive landscape,
17				business partnerships, terms of existing
18				confidential agreements,
19				and internal presentations discussing
20				business strategy, which
21				could be used to injure Activision if made
22				publicly available.
23	Direct	Pages 71, ¶ 198, first	Activision	This portion contains
24	Testimony of Robin S. Lee	full bullet, portions of lines 1-7		non-public and highly sensitive information
25	by the FTC			including, but not
26				limited to, internal
				decision-making processes, strategic
27				evaluation of forward-
28				looking opportunities,

1 2	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
3 4 5				assessment of the competitive landscape, business partnerships, terms of existing
6				confidential agreements, and internal
7				presentations discussing business strategy, which
8				could be used to injure
9				Activision if made publicly available.
10	Direct	Page 71, fn. 158, portion	Activision	This portion contains
11	Testimony of Robin S. Lee by the FTC	of lines 1-6		non-public and highly sensitive information
12 13	by the FTC			including, but not
14				limited to, internal decision-making
15				processes, strategic evaluation of forward-
16				looking opportunities,
17				assessment of the competitive landscape,
18				business partnerships, terms of existing
19				confidential agreements,
20				and internal presentations discussing
21				business strategy, which could be used to injure
22				Activision if made
23 24	D:	D 51 6 161		publicly available.
25	Direct Testimony of	Page 71, fn. 161, portion of lines 1-4	Activision	This portion contains non-public and highly
26	Robin S. Lee by the FTC			sensitive information
27				including, but not limited to, business
28				partnerships, and terms of existing confidential

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Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request
			agreements, which could be used to injure
			Activision if made publicly available.

ARGUMENT

I. <u>Sealing Activision's Confidential Business Information Contained in the Lee Direct Is</u> Warranted Under Ninth Circuit Precedent

In the Ninth Circuit, "[p]arties seeking to seal judicial records relating to motions that are 'more than tangentially related to the underlying cause of action,' bear the burden of overcoming the presumption with 'compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure." *Lenovo (United States) Inc. v. IPCom GmbH & Co.*, KG, 2022 WL 2313948, at *1 (N.D. Cal. Jun. 28, 2022); *see also Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) ("[T]he court must 'conscientiously [] balance the competing interests' of the public and the party who seeks to keep certain judicial records secret."). Courts in this Circuit regularly find that sealing is warranted where the records or information that are sought to be sealed could be used "as sources of business information that might harm a litigant's competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *see also In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (same); *Velasco v. Chrysler Grp. LLC*, No. CV 13-08080 DDP (VBK), 2017 WL 445241, at *2 (C.D. Cal. Jan. 30, 2017) (stating that "district courts in this Circuit have sealed records containing 'information about proprietary business operations, a company's business mode or agreements with clients,' [and] 'internal policies and strategies'") (internal citations omitted).

"The Ninth Circuit has explained that 'in general, compelling reasons sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such court files might have become a vehicle for improper purposes, such as the use of records to . . . release trade secrets." *Velasco*, 2017 WL 445241, at *2 (quoting *Elec. Arts*, 298 F. App'x at 569); *see also*

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1 || Elec. Arts, 298 F. App'x at 569 ("A 'trade secret may consist of any formula, pattern, device or $2 \parallel$ compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it."") (citation omitted). A court has "broad latitude" to grant protective orders to prevent disclosure of "many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information." Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1211 (9th Cir. 2002).

In determining whether a document should be filed under seal, courts consider, among other things, the measures taken to guard the information's secrecy and the value of the 10 information to the business or its competitors. E.g., Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1212 (9th Cir. 2002). Here, Activision seeks to seal three narrowly tailored excerpts of the Lee Direct which reference and reflect, among other things, confidential, proprietary information relating to Activision's internal decision-making processes, strategic evaluation of forward-looking opportunities, business partnerships, and internal business strategy. The disclosure of this information could be used to injure Activision if made publicly available.

II. Sealing the Lee Direct Is Necessary to Protect Activision's Confidential and **Proprietary Business Information**

Activision seeks to maintain under seal three portions of the Lee Direct, as they contain Activision's non-public and highly sensitive information from documents obtained during the course of the FTC's investigation and during litigation discovery. Robinson Decl. ¶¶ 4–6. Examples of such confidential information include, but are not limited to, information reflecting Activision's internal decision-making processes, strategic evaluation of forward-looking opportunities, business partnerships and negotiations, terms of existing confidential agreements, and internal business strategy. *Id.* ¶¶ 4. Activision takes robust measures to maintain the confidentiality of all the above-described information and does not disclose it publicly. *Id.* ¶ 6. Disclosure of this information would provide Activision's competitors with private information about Activision's performance and internal business strategy, which could harm Activision's competitive standing. Id. ¶ 5; see Cont'l Auto. Sys. v. Avanci, LLC, No. 19-cv-02520-LHK, 2019

1 WL 6612012, at *4 (N.D. Cal. Dec. 5, 2019). Thus, the unsealing of this highly confidential and $2\parallel$ sensitive information would cause injury to Activision that cannot be avoided through less 3 restrictive alternatives. *See* Robinson Decl. ¶ 5.

Finally, Activision provided the FTC with the confidential business information cited in the 5 | Lee Direct pursuant to the statutory and regulatory guarantees of confidentiality contained in the Hart-Scott-Rodino Act or the FTC Act. Id. ¶ 6; see also 15 U.S.C. §§ 18a(h), 46(f), 57b-2(b), 57b-2(c); 6 C.F.R. § 4.10(d)-(g). In similar cases, the FTC has acknowledged the need to maintain the $8 \parallel$ confidentiality of a party's confidential business information that has been provided to the FTC via 9 a regulatory request. See, e.g., FTC v. Lockheed Martin Corp., 2022 WL 1446650, at *2 (D.D.C. 10 Jan. 25, 2022) ("According to the FTC, sealing the complaint is appropriate . . . because the filing 11 | includes confidential information submitted . . . pursuant to 'statutory and regulatory guarantees of 12 confidentiality. . . . The requested sealing covers only confidential information and is, according to 13 | the FTC, required by regulation.").

III. Conclusion

As stated above, compelling reasons justify sealing Activision's confidential business 16 information contained within the Lee Direct, and Activision respectfully requests that this Court grant the FTC's Administrative Motion to Consider Whether Another Party's Material Should Be Sealed (ECF No. 226), consistent with the specific recitations stated herein. In accordance with Civil Local Rule 7-11, Activision has also filed a Proposed Order herewith.

DATED: July 3, 2023 By: /s/ Caroline Van Ness

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